

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GEORGE HERTZOG,

Petitioner,

v.

MAGGIE MILLER-STOUT,

Respondent.

CASE NO. C06-5287RJB

ORDER ADOPTING REPORT
AND RECOMMENDATION,
DISMISSING WRIT OF HABEAS
CORPUS, AND DENYING
MOTION TO SUPPLEMENT

This matter comes before the Court on the Report and Recommendation of Magistrate Judge Karen L. Strombom (Dkt. 19) and the petitioner's Motion to Supplement the Records and to Produce New [sic] Found Evidence (Dkt. 27). The Court has considered the Report and Recommendation, the motion, and the file herein.

I. BACKGROUND AND DISCUSSION

As set forth in the Report and Recommendation, Mr. Hertzog's petition is time barred because the statute of limitations ran on or about November 19, 2001. Dkt. 19 at 4. Mr. Hertzog twice moved for additional time to file objections to the Report and Recommendation, and both motions were granted. *See* Dkt. 22, Dkt. 25.

Mr. Herzog has not filed objections to the Report and Recommendation. In the interest of fairness to the petitioner, the Court has considered Mr. Hertzog's Motion to Supplement the

1 Records and to Produce New [sic] Found Evidence (Dkt. 27) and the accompanying documents
2 as objections.

3 The only portion of the motion addressing the timeliness of Mr. Hertzog's petition
4 apparently contends that the petition is not time barred due to the improper denial of requests for
5 documents from his court-appointed attorney in February of 2001. Dkt. 27-1 at 4. The majority of
6 the motion addresses the substantive merits of Mr. Hertzog's petition and not its timeliness. In a
7 document entitled "Rebuttal," Mr. Hertzog contends that he was unaware of the statute of
8 limitations governing his petition and lists several events that occurred after the statute of
9 limitations expired. *See* Dkt. 27-6 at 7-8. Mr. Hertzog fails to establish that equitable tolling is
10 warranted, and the Report and Recommendation should be adopted.

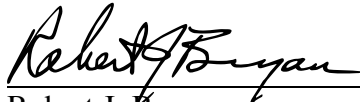
11 **II. ORDER**

12 Therefore, it is hereby

13 **ORDERED** that the Report and Recommendation of Magistrate Judge Karen L.
14 Strombom (Dkt. 19) is **ADOPTED**, and the petitioner's writ of habeas corpus (Dkt. # 5) is
15 **DISMISSED WITH PREJUDICE**. The Motion to Supplement the Records and to Produce
16 New [sic] Found Evidence (Dkt. 27) is **DENIED**.

17 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel
18 of record and to any party appearing *pro se* at said party's last known address.

19 DATED this 4th day of December, 2006.

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22 Robert J. Bryan
23 United States District Judge
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